



POLICE DEPARTMENT

August 26, 2011

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Damon Martin
Tax Registry No. 920558
75 Precinct
Disciplinary Case No. 86288/10

The above-named member of the Department appeared before me on March 17, 2011, charged with the [REDACTED]

1. Sergeant Damon Martin, while assigned to the 73rd Precinct, while on-duty, on or about October 4, 2008, in the vicinity of the 73rd Precinct stationhouse, Kings County, did engage in conduct prejudicial to the good order, efficiency and discipline of the New York City Police Department in that said Sergeant did abuse his authority as a member of the NYPD by authorizing a subordinate to issue a summons to Mr. Person A Person A without sufficient legal basis for said summons. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

2. Sergeant Damon Martin, while assigned to the 73rd Precinct, while on-duty, on or about October 4, 2008, in the vicinity of the 73rd Precinct stationhouse, Kings County, did abuse his authority as a member of the NYPD in that said Sergeant conducted and/or authorized a strip-search of Mr. Person A but failed to follow proper strip-search procedures: to wit, Sergeant Martin did not receive authorization from the desk officer to conduct said strip-search, and did not notify the desk officer that said strip-search was being conducted. *(As amended)*

P.G. 208-05, Page 2 ARREST GENERAL SEARCH GUIDELINES

3. Sergeant Damon Martin, while assigned to the 73rd Precinct, while on duty, on or about October 4, 2008, in the confines of the 73rd Precinct, Kings County, made insufficient notations in his activity log for his tour on that date.

P.G. 212-08, Page 1 ACTIVITY LOGS

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4. Sergeant Damon Martin, while assigned to the 73rd Precinct, while on-duty, on or about October 4, 2008, in the confines of the 73rd Precinct, Kings County, did engage in conduct prejudicial to the good order, efficiency and discipline of the New York City Police Department in that said Sergeant did abuse his authority as a member of the NYPD by transporting Mr. Person A to the 73rd Precinct Stationhouse, without police necessity. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and the Respondent was represented by Anthony DiFiore, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Person A and Sergeant Samuel Negrón as witnesses.

Person A

Person A a 19-year old resident of Brooklyn, was 17 years old in October 2008. At approximately 12:00 p.m. on October 4, 2008, he and his younger brother went to the park that is attached to Intermediate School 55 in Brooklyn, where they met five friends. Person A testified that at approximately 3:15 p.m. that day, they had been "shooting

hoops” on the basketball court for 15 to 20 minutes when a black unmarked van drove into the park and stopped in front of them. Four members of the service (three males and one female) exited the vehicle. One of the officers approached Person A and told him to take his hand out of his pocket. Person A asked the officer in a moderate tone of voice what was going on. Person A was holding his cell phone in his pocket, and the officer grabbed his hand and pulled it out of the pocket. Another officer grabbed Person A handcuffed him, and subsequently “tapped” his pockets, unbuckled his belt, and tried to pull down his pants. However, the officer was unsuccessful in pulling down his pants because, according to Person A his friends were standing around him and saying to the officers: “[Y]ou can’t be doing that. What are you doing? You know that’s not right.” When Person A asked the officer why he was being searched, he was told “for resisting arrest.” He was then led to the van, where he fell on the floor. A police officer picked him up to a sitting position by his handcuffs.

Person A was transported to the 73 Precinct station house where an officer, whom he believed to be named “Gloragille,” directed him to stand in line. When Person A leaned over to try and see the officer’s badge to get his name, the officer turned around and “choked” him. Person A told the officer that he could not breathe and that he needed his pump. The officer then escorted him to a secluded room containing cells where they were first joined by two male officers and later by a female officer. An officer proceeded to pull down Person A pants and underwear and told him to squat and bend over. An officer then pulled his pants and underwear back up and took off his handcuffs. Next, he was told to take off his shoestrings and belt and was taken to a larger cell containing other prisoners, where he was held for approximately three hours. Person A was then

escorted to his mother, who was holding a summons for disorderly conduct that had been issued to Person A [Department's Exhibit (DX) 2 is a copy of the summons, which was issued to Person A by Gloragille at the direction of the Respondent.]. Person A subsequently learned that the charges regarding the disorderly conduct summons were dropped and he did not need to pay the fine. [DX 3 is the certificate of disposition for the summons. It indicates that the charge against Person A was dismissed because it was legally insufficient.]

Person A testified that he was not smoking marijuana or cigarettes while in the park. The people he was playing with were not smoking either. He was not in possession of marijuana at the time. This case is the first time that he has filed a complaint with the Civilian Complaint Review Board (CCRB). He has never been convicted of a crime.

On cross-examination, Person A confirmed that it was Gloragille who conducted the strip search at the station house, but the Respondent and another Caucasian officer were present and watched. It was the Respondent who placed him under arrest at the park. Person A agreed that the search conducted by the officers at the park was not a strip search but just a pat down. According to Person A the Respondent neither informed him that he was being arrested for marijuana possession nor instructed him to hand over a marijuana cigarette. Person A did not recall the Respondent telling him at the station house that he knew that Person A had marijuana in his pants. He denied voluntarily dropping his pants to show the Respondent that he did not have drugs on him. Person A was allowed to keep his shirt, socks, and shoes on during the search.

Sergeant Samuel Negron

Negron, a 10-year member of the Department currently assigned to the 73 Precinct, was working as the desk officer between 3:00 p.m. and 11:20 p.m. on October 4, 2008. He testified that at no point that day did he authorize the strip search of a prisoner, nor was he ever made aware by the Respondent or any other member of the service that they wished to conduct a strip search. Upon review of the command log from that day, Negron testified that he was assigned to the desk when an entry of an arrest stamp for Person A was made. Negron denied that it was his handwriting inside the arrest stamp and denied that the notation "SS@SH" was written in his handwriting. Negron explained that the entry for the strip search should have included the time of the search and the name of the desk officer who authorized it. [DX 4 is a copy of the relevant command log page. The only information that was provided about the strip search was that it was conducted inside the station house. The entry read: "SS @ SH."]

On cross-examination, Negron acknowledged that although procedure dictates that desk officers authorize strip searches, sergeants from the street narcotics enforcement unit (SNEU) conduct strip searches without first obtaining authorization from a desk officer "all the time." It is also common for desk officers to allow SNEU sergeants to make arrest entries in the command log. The Respondent was the SNEU sergeant on the day of Person A arrest, and Negron assumed that it was the Respondent who made the command log entries relating to Person A. Negron agreed that secreting marijuana in someone's pants would be a valid reason to conduct a strip search. He did not have a specific recollection of the Respondent bringing Person A into the station house, but he

stated that he would have remembered had the Respondent told him Person A was hiding marijuana in his pants.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, a 14-year member of the Department, is currently assigned to the 75 Precinct. As a SNEU sergeant, the Respondent stated that his team has made approximately 800 arrests in a year, a large percentage of which were for marijuana. He has received training in the detection of marijuana.

On October 4, 2008, the Respondent was working as the 73 Precinct SNEU sergeant. He testified that he was driving westbound on Bergen Street in an unmarked Department van with Police Officers Edson Gloragille and Richard Alerte that day when he saw Person A sitting down, about 20 feet away, with what he believed to be a marijuana cigar. He directed his officers to drive into the park. He stated that as he approached Person A Person A made a motion down the front of his pants and there was a strong smell of marijuana, which the Respondent recognized based on his training and expertise. The smell was noticeable from a distance of approximately eight to 10 feet. Person A appeared very nervous as the Respondent approached him in full uniform, and Person A tried to walk away. At that point, the Respondent ordered the police officers to stop him. When Person A failed to comply with orders to take his hands out of his pockets, the officers physically took them out. Person A started cursing at the officers saying, "Get the F off of

me, I didn't do nothing. Why you stopping me?" He also flailed his arms and tried to run while he was being handcuffed. Person A was with three or four other people, and additional onlookers were starting to gather.

The Respondent informed Person A that he was under arrest for possession of marijuana. The Respondent personally conducted a quick search of the area to see what was on the ground, although he believed the marijuana to still be on Person A person. No marijuana cigar was found on the ground by the Respondent. The Respondent patted down Person A outer garments but did not feel anything. He then put Person A in the van with the intention to do a more thorough search at the station house since he believed the marijuana to be down the front of Person A pants. He denied that it was his intention at that point in time to perform a strip search.

Upon arriving at the station house, the Respondent made command log entries about Person A and informed Negron that he needed to take Person A into the cells because he was still acting belligerent. According to the Respondent, the area that Person A was brought to had other prisoners and was not an area in which one would perform a strip search. The Respondent testified that his intent was to calm Person A down and to give him the opportunity to turn over the marijuana cigar that might have been on him.

Person A continued to curse, and he stated that he did not have any drugs on him. Person A then voluntarily unbuckled his pants, pulled them down to his ankles, lifted up his shirt, and spun around. Person A proceeded to take the waistband of the gym shorts he was wearing under his pants and shake it out while saying, "Look, I don't have anything." The Respondent denied that Person A dropped his pants, stating: "His shorts were still on." The Respondent told Person A to put his clothes back on because there were other

prisoners and a cell attendant in the area, which was open to the rest of the station house. The Respondent stated that a strip search was never conducted by him nor did he authorize anyone else to perform a strip search, notwithstanding the fact that he made an entry in the command log that said "SS @ SH," meaning strip search at the station house. He denied asking Person A to remove any of the following items: his pants, shorts, underwear, shoes, socks, or shirt. He further denied touching Person A head to search his hair or seeing any of Person A private areas. The Respondent explained that he wrote the entry as such because he wanted to have Person A voluntarily actions of pulling his pants down and lifting up his shirt documented somewhere. The Respondent stated:

Should I have maybe put it in my memo book, maybe, but I documented [it] here and I wrote it in as strip search at station house just in case if he says, yes, I can always say, listen, the guy pulled down his clothes voluntarily. I didn't, you know, all I asked him to do was listen, if you have anything, you need to take it out.

On cross-examination, the Respondent confirmed that when he approached Person A it was for the sole purpose of arresting him for marijuana possession. The Respondent agreed that he personally made the decision to arrest Person A. The Respondent testified that it was only after he told Person A that he was under arrest that Person A began to engage in conduct that could be considered disorderly. The Respondent went on to testify, however, that Person A was acting disorderly when he did not stop when ordered and tried to walk away from the police. The Respondent indicated that "[i]n [his] opinion, in [his] judgment" when a civilian disobeys a lawful order, that would be considered disorderly conduct. Person A behavior attracted a handful of onlookers to

gather. The Respondent ordered one of his subordinates to issue the summons for disorderly conduct to **Person A**

The Respondent conceded that he did not search the Department van for the marijuana cigar even though it was possible that **Person A** had discarded it there, nor did he recall instructing a member of his team to conduct a search of the van. The Respondent explained that it is normal procedure for Department vehicles to be searched after prisoners are transported, and SNEU officers will perform searches without being prompted by supervisors. He did not notate any search of the van in his Activity Log. The Respondent did not believe that he or any of his officers went back to the scene to see if the marijuana cigar could be recovered in the park. He conceded that he did not specify in his Activity Log the reason for **Person A** arrest or what happened at the station house. [DX 1 is a copy of the relevant Activity Log page.]

[DX 5 and 5A are the compact disc recording and transcript of the Respondent's CCRB interview, dated September 17, 2009. The Respondent stated in the interview that he told **Person A** in the cell area, "Listen. I know you put it down your pants. You know you're going to have to take off your pants." At that point, **Person A** pulled down his pants and lifted up his shirt, stating: "Look. I don't have anything." The Respondent told **Person A** to pull his clothes off and place them in the cell. **Person A** shook his clothes out, and the Respondent did not see anything fall out. The Respondent told **Person A** to get dressed. At no point did **Person A** take off his shoes, socks, underwear, or the shorts that he was wearing underneath his pants. The Respondent said that he did not order **Person A** to squat, and the Respondent did not see his genitals. **Person A** was issued a summons and released.]

On redirect examination the Respondent clarified that the summons for disorderly conduct was for failure to respond to his commands coupled with the fact that Person A was "tumultuous in his behavior" as far as not allowing the officers to place him under arrest and using obscene language in public.

FINDINGS AND ANALYSIS

In Specification No. 1, the Respondent is charged with abusing his authority by authorizing a subordinate to issue a disorderly conduct summons to Person A without sufficient legal basis to do so. In Specification No. 2, the Respondent is charged with abusing his authority in that he conducted and/or authorized a strip search of Person A but failed to follow proper strip search procedures in that he failed to get authorization from the desk officer to conduct said strip search and he also did not notify the desk officer that the strip search was being conducted. In Specification No. 3, the Respondent is charged with making insufficient notations in his Activity Log regarding the incident with Person A on that date. In Specification No. 4, the Respondent is charged with abusing his authority by transporting Person A to the 73 Precinct station house without police necessity.

There were two very different versions of what occurred, one from Person A and the other from the Respondent.

Person A stated that he was playing basketball in the park with friends when a black unmarked van drove into the park and stopped in front of them. Four officers exited the van and one of the officers approached him and told him to take his hand out of his pocket where he was holding his cell phone. One officer then pulled Person A hand

out of his pocket while another handcuffed him. One of the officers conducted a pat down and "tapped" his pockets, unbuckled his belt and tried to pull his pants down, but they did not strip search him. He was told that he was being searched for resisting arrest and transported in the van to the 73 Precinct station house. He was not told that he was arrested for smoking marijuana. The officer who arrested him was the Respondent.

At the station house, Person A claimed that he was told to stand in line and when he tried to learn the name of an officer, he was choked by him. He was then escorted by the officer to a room containing cells where three other officers joined them. Officer Gloragille then pulled his pants and underwear down and told him to squat and bend over. This occurred with the Respondent and another officer present. His pants were then pulled up and his handcuffs were removed. He was then held in a cell with other prisoners for three hours until his mother came. He was issued a summons for disorderly conduct and let go. He denied that he or any of his friends were smoking marijuana. He also denied that he voluntarily dropped his pants to show the Respondent that he did not have any drugs on him. No drugs were found on him either in the park or at the station house.

The Respondent testified that he was riding in an unmarked van with two other officers when he saw Person A sitting in a park with a marijuana cigar. He directed his officers to drive into the park and as he approached Person A he saw him make a motion down the front of his pants. The Respondent also smelled a strong odor of marijuana. The smell was noticeable from a distance of eight to 10 feet from Person A Person A was stopped by the officers after he refused to stop walking away. When he failed to take his hands out of his pockets, the officers physically took them out.

According to the Respondent, Person A cursed at them, stating, "Get the F off of me, I didn't do nothing" and flailed his arms when he was being handcuffed. When the Respondent told Person A that he was under arrest for possession of marijuana, he patted Person A outer garments but did not detect anything. He also gave a quick search of the immediate area but did not find anything. It was the Respondent's belief that Person A had put the marijuana cigar down his pants and that was the real basis for his arrest when he approached Person A. He expected to find the evidence once they were at the station house. He also believed that Person A engaged in disorderly conduct when he was walking away from the police and did not stop when the Respondent ordered him to. Person A was with three or four other people and other people in the park began to gather.

At the station house, according to the Respondent, he essentially told Person A that he knew that Person A put the marijuana down his pants and that he was going to have to take off his pants. Person A response was to pull down his pants and lift his shirt. When Person A shook out his clothes and the Respondent did not see anything fall out, he told Person A to get dressed. Person A was issued a disorderly conduct summons and released. The failure of Person A to obey his orders, coupled with Person A resistance to being handcuffed and using obscene language in public, was the basis, he said, for the summons.

While the Respondent insisted that he did not conduct a strip search, he did make an entry in the command log, "SS @ SH," meaning strip search at the station house. He explained the he intended to conduct the strip search but Person A voluntarily pulled his pants down and lifted his shirt.

Negron, the desk officer at the time, stated that at no time did he authorize a strip search of a prisoner nor was he made aware that the Respondent intended to conduct one. Negron pointed out that while procedure dictates that it is the desk officer who authorizes strip searches, SNEU sergeants regularly conduct strip searches without first obtaining authorization from the desk officer.

In assessing which version of events regarding what occurred in the park is true, the Court notes that it has essentially been presented with a "one on one" situation that is, one witness, Person A testified to one version while the Respondent testified to a different version. No other witnesses to these alleged events were called by either side.

There is no inherent reason to believe one version over the other nor is there any extrinsic evidence to rely on. The Department has the burden of proving its assertions. The evidence being equal as far as the incident in the park, this Court must accept the Respondent's version.

That, however, does not resolve the issues related to whether what occurred in the park constitutes misconduct. Even under the Respondent's version of events, there are problems with the police action taken.

The Respondent admitted that he approached Person A with the intention of placing him under arrest for possession of marijuana. The circumstances as he described them were that he was a passenger in a police van and as they passed the park, he observed Person A smoking something that looked like a marijuana cigar or "blunt." He ordered the van into the park and from a distance of about 10 feet he smelled what he believed to be marijuana. He observed Person A to be nervous and saw him putting his hand in his pants.

While these observations could be construed as indicia of the crime of possessing marijuana, which would have given him reasonable suspicion to stop Person A and conduct a further investigation at the scene, more was required for the arrest of Person A. The Respondent was apparently aware of this and believed that the evidence he needed, the marijuana blunt, had been hidden by Person A down his pants. The arrest of Person A for possession of marijuana therefore occurred without the requisite probable cause.

Street encounters between police and criminal suspects raise some of the most difficult and contentious legal issues. Because legal experts with the opportunity for leisurely discussion and the wisdom of hindsight often have difficulty parsing these issues, this tribunal has not applied strict legal standards in determining if the officer has engaged in misconduct. A review of the totality of the circumstances is required.

In the instant case, what the Respondent essentially did was arrest Person A so that he could conduct a search to find the evidence he needed to arrest Person A in the first place. This is improper for two reasons. The first is that an arrest was made without the requisite probable cause and without the corpus of the crime, the marijuana.

The search of a prisoner, be it an "ordinary" search or a strip search, is an inventory search of a person under arrest. Certainly part of that inventory search incorporates looking for contraband but the purpose is to prevent the prisoner from bringing that contraband into the custodial facility. A search for evidence of a crime requires a warrant absent exigent circumstances. There were no exigent circumstances here.

The Respondent is a sergeant. As such, he is not merely a supervisor but the officer who verifies arrests by subordinate officers. He knew or should have known these

basic principles. Certainly he knew at the time he arrested Person A that he did not have sufficient basis to do so.

The Respondent is not charged with making an improper arrest; he is, under Specification No. 4, charged with transporting Person A to the precinct. The reasons to transport Person A to the precinct were because he had been arrested for possession of marijuana and to conduct the search. Neither of these constituted a valid reason for taking Person A into custody and transporting him; consequently, the Respondent is found Guilty of Specification No. 4.

The Respondent denied conducting a strip search. He said that Person A pulled his pants down of his own volition. Person A testified that he was strip searched by an officer. Here, there is extrinsic evidence to support Person A testimony. The Respondent noted that he was going to conduct a strip search in the command log. Even if the Respondent's testimony is accurate and Person A pulled down his pants by himself, it is clear that the Respondent intended to conduct a strip search and had communicated that inevitable action to Person A.

Under Specification No. 2, the Respondent is not charged with conducting a strip search but with failing to notify the desk officer and failing to obtain authorization from the desk officer for the strip search. While the Respondent is a sergeant, the rule is clear that the desk officer is the one who must know about and approve all strip searches. Notwithstanding that the Respondent is a sergeant who may at some point serve as desk officer, he was not the desk officer that day, and he was required to notify the desk officer and obtain permission.

This is not simply a matter of adhering blindly to a rule, as Negron testified; the Respondent's notations were inadequate. As the desk officer, Negron would have had the responsibility to make full and complete notations which could have and should have prevented the factual dispute as to the circumstances under which **Person A** pants were lowered.

The Respondent, having improperly authorized a strip search, is found Guilty of Specification No. 2.

Specification No. 3 charges the Respondent with making insufficient notations in his Activity Log for his tour on October 4, 2008. The Respondent acknowledged, during his testimony, his failure to make notations regarding the circumstances of the arrest and search of **Person A**. His Activity Log for that day is in evidence (DX 1). It contains only the barest outline of his activities. It lists a tour of 0930 by 1827 hours and contains only two time notations: present for duty at "09:30," and another notation "1098" (resuming patrol) at 1030 hours. It has four separate notations of "1 under" indicating one person under arrest. There are no time notations and the only details provided are as follows:

1 under @ Boyland [Avenue] + Dean [Street]
Set @ Chauncey [Street] + Rock (presumably meaning
Rockaway Avenue)
1 under
Set @ Halsey [Street] + Bway (Broadway)
1 under
Set @ Boyland [Avenue] + Dean [Street]
1 under Dis Con (disorderly conduct).

There are no names and no mention of any search. The inadequacy of these notations speaks for itself and the Respondent is found Guilty of Specification No. 3.

As has been noted, **Person A** was given a summons for disorderly conduct at the station house, after it was determined that he was not in possession of a marijuana cigar

or other contraband. The reasons given for issuing the summons seemed to vary depending on when the Respondent was asked the question. He said at one point that it was because Person A continued to walk away when he was told to stop, that he used obscene language in public, that his behavior caused onlookers to gather, and that he refused to be placed under arrest.

In attempting to determine what the basis for issuing the summons was, the Court reviewed a copy of the summons and certificate of disposition issued by the Criminal Court (DX 2 and 3). The Criminal Court records indicate that the summons was dismissed and the reason for the dismissal was that the summons was "legally insufficient." Looking at the summons, the reason for the dismissal is readily apparent: there is no narrative setting forth facts establishing the offense or even attempting to establish the offense of disorderly conduct. One of the reasons for this is that the wrong summons form was used and does not have any space for a narrative. This is because the form used was for a traffic infraction. In the box on the summons captioned "Description of Traffic Infraction," there is a notation which appears to say: "Dis Con obscene gesture." Although the Respondent did not prepare this summons, it was completed at his direction and supervision. Given that there was no clearly stated and articulated reason to issue the summons, it was inappropriately issued. The Respondent is found Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on December 8, 1997. Information from

his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty as charged. Based on the foregoing, it is recommended that the Respondent forfeit a penalty of 15 vacation days.

Respectfully submitted,

J. Grappone
by M. Kelly
John Grappone

Assistant Deputy Commissioner Trials

APPROVED
JUL 10 2012
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner -- Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT DAMON MARTIN
TAX REGISTRY NO. 920558
DISCIPLINARY CASE NO. 86288/10

The Respondent received an overall rating of 5.0 "Extremely Competent," 4.5 "Extremely Competent" and 4.0 "Highly Competent" on his last three annual performance evaluations.

On September 14, 2004, the Respondent pled Guilty to failing to safeguard a prisoner and failing to report the prisoner missing, and forfeited a penalty of 32 suspension days. On April 27, 2005, he lost identification his card during the pursuit of a perpetrator and received instructions. On November 30, 2009, the Respondent was placed on LEVEL II Force Monitoring, based on his overall record.

The Respondent has been awarded 18 Excellent Police Duty Medals and 3 Meritorious Medals.

For your consideration.

J. Grappone
by M. Hany
John Grappone
Assistant Deputy Commissioner Trials